PP

v.

DATO' SERI ANWAR IBRAHIM (NO 4)

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL APPLICATION NO: 44-115-98]
27 MAY 1999

CRIMINAL PROCEDURE: *Prosecution - Conduct of prosecution - Whether in hands of Attorney-General - Motion to prevent Deputy Public Prosecutors from prosecuting case - Whether scandalous - Allegations that Deputy Public Prosecutors sought to fabricate evidence - Whether contemptuous*

The accused, who stood charged for offences under the Emergency (Essential Powers) Ordinance No. 22 of 1970, applied through his counsel ('Zainur Zakaria') for an order *inter alia* that two Senior Deputy Public Prosecutors be prevented from further prosecuting in the case(s) against him, on the grounds that they had sought to fabricate evidence against him. Before the learned judge, a question arose as to whether such an application constitutes contempt of court, and in any case whether it was so scandalous, frivolous or vexatious that it ought to be dismissed *in limine.*

Held:

[1] There was no basis for the accused to say that Dato' Abdul Ghani Patail had asked for evidence to be fabricated against him. The motion was contemptuous and for that En. Zainur Zakaria must be guilty of contempt of court. Also, the motion being contemptuous, the question of making any order in respect of the prayers sought simply does not arise. The motion stands to be dismissed *in limine* without even for the need of an affidavit-in-reply from the Attorney-General's Chambers.

[2] The prayers sought cannot be sustained in law. The court does not have the power to discharge a prosecutor from further prosecuting in a case. Pursuant to art. 145(3) of the Federal Constitution, the conduct of a prosecution is in the hands of the Attorney General. It follows that the designation of a Deputy Public Prosecutor to conduct the prosecution of a case is an exercise of discretion conferred on the Attorney-General and an application to review such decision must be made to him and not to the court.

[Motion struck out summarily.]

Case(s) referred to:
PP v. Datuk Harun Hj Idris & Ors [1976] 2 MLJ 116

Legislation referred to:
Federal Constitution, art. 145(3)

Other source(s) referred to:
Contempt of Court, Oswald, 3rd edn, p 82

Reported by WA Sharif

JUDGMENT

Augustine Paul J:

On 28 November 1998 Dato' Seri Anwar bin Ibrahim ("the accused") filed a notice of motion ("the motion") through the law firm of Messr. Zainur Zakaria & Co praying for an order that:

(a) Senior Deputy Public Prosecutors, Dato' Abdul Gani Patail and Encik Azahar bin Mohamed, be prevented or prohibited or discharged from further prosecuting in this case;

(b) The matter of the conduct of the two said Senior Deputy Public Prosecutors be referred to the Attorney-General with a view to such action as may be appropriate to be taken against them.

The motion was supported by an affidavit ("the affidavit") affirmed by the accused. The affidavit was based on a statutory declaration ("the statutory declaration") affirmed by one Manjeet Singh Dhillon, an advocate and solicitor, and a letter ("the letter") that he had written to the Honourable Attorney-General. In substance the motion was anchored on the premise that Dato' Abdul Gani Patail had asked Manjeet Singh Dhillon to fabricate evidence against the accused. As the motion was contemptuous I had found Zainur Zakaria guilty of contempt of court for having filed it. On 2 December 1998 I struck out the motion summarily. This appeal is by the accused against that order.

In my grounds of judgment in the appeal by Zainur Zakaria against his conviction and sentence for contempt of court I had set out in detail the reasons why I had found the motion to be scandalous, frivolous, vexatious and an abuse of the process of the court meant to undermine the intergrity of the trial. In coming to that finding I had accepted the contents of the statutory declaration and the letter as the truth as to what transpired at the meeting between Dato' Abdul Gani Patail and Manjeet Singh Dhillon which prompted the motion. I had found that there was no basis for the accused to say that

Dato' Abdul Gani Patail had asked for evidence to be fabricated against him. As a matter of fact I had referred the documents annexed to the motion to Zainur Zakaria in detail to ascertain whether there was any basis for him to have filed it. He was not able to satisfy me. As I had found the motion to be contemptuous the question of making any order in respect of the prayers sought simply does not arise. It stands to be dismissed in limine without even for the need of an affidavit-in-reply from the Attorney-General's Chambers. Where there is an abuse of the process of the court, that is to say a proceeding which is frivolous, vexatious or oppressive, the court may strike out the pleading or stay the proceeding under its inherent jurisdiction (see Oswald's *Contempt of Court* 3rd edn p 82).

Be that as it may, and, in any event, the prayers sought by the accused cannot also be sustained in law. With regard to the first prayer it is my view that the court does not have the power to discharge a prosecutor from further prosecuting in a case. Pursuant to art. 145(3) of the Federal Constitution the conduct of a prosecution is in the hands of the Attorney-General (see *PP v. Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116). It is he, and he alone, who has been empowered to conduct a prosecution at his discretion. It follows that the designation of a Deputy Public Prosecutor to conduct the prosecution of a case is an exercise of the discretion conferred on the Attorney-General and an application to review such a decision must be made to him and not to the court. With regard to the second prayer a court order is not necessary to refer the conduct of a Deputy Public Prosecutor to the Attorney-General. The accused may do it himself.

In the premises I struck out the motion summarily.